

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JIMMY LEE DAVIS,  
Plaintiff,

v.

CITY OF SAN FRANCISCO,  
Defendant.

Case No. 19-cv-03419-PJH

**ORDER DISMISSING ACTION WITH  
PREJUDICE**

Re: Dkt. Nos. 17, 19

Pending before the court is plaintiff Jimmy Lee Davis's amended complaint. Because plaintiff has been granted permission to proceed in this action in forma pauperis ("IFP") (Dkt. 5), the court reviews his complaint pursuant to 28 U.S.C. § 1915. That review "accords judges . . . the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." Denton v. Hernandez, 504 U.S. 25, 32–33 (1992) ("a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible") (quoting Neitzke v. Williams, 490 U.S. 319, 327 (1989)). "[C]laims describing fantastic or delusional scenarios" are clearly baseless. Id.

On August 13, 2019, this court dismissed plaintiff's original complaint as frivolous, with leave to amend. Dkt. 15. That order described plaintiff's original complaint, which alleged a fantastic or delusional wide-ranging conspiracy between the mayor of San Francisco, her son, the FBI, the SWAT Team, Magistrate Judge Beeler, and others to defraud and murder him. See id. On August 22, 2019, plaintiff filed an amended complaint, naming the City of San Francisco as the sole defendant. Dkt. 17. On

1 September 11, 2019, plaintiff made another filing, without a caption, claiming to be a  
2 paper “amending his complaint in the above captioned case[.]” Dkt. 19. Because plaintiff  
3 amended his complaint on August 22, plaintiff’s attempt to file a second amended  
4 complaint without leave of court was improper. See Fed. R. Civ. P. 15(a)(2).  
5 Accordingly, the first amended complaint filed on August 22 is the operative complaint in  
6 this action, and the court hereby STRIKES the filing located at Docket Number 19.

7 The operative, first amended complaint brought against the City of San Francisco  
8 repeats the same allegations underlying plaintiff’s previously-dismissed complaint. See  
9 Dkt. 17. He again alleges that Mayor Breed, the SWAT Team, and others “did fire upon  
10 him from downtown San Francisco to Bayview and Fillmore Districts – in an attempt to  
11 assassinate and intimidate him with lethal weapons[.]” Id. at 1–2. The complaint  
12 continues, largely through invective, to allege the same type of vague, wide-ranging  
13 conspiracy that formed the basis of his original complaint. Simply put, the amended  
14 complaint is little-changed from the original, and it is frivolous for the same reasons.

15 Rather than addressing these problems, which the court identified in its order  
16 dismissing the original complaint with leave to amend, plaintiff instead argues that his  
17 original complaint was correct, and that characterizing it as “delusional” was racist and  
18 disrespectful. Id.

19 Given that plaintiff has had ample opportunity to amend his complaint, and  
20 because he has not demonstrated any likelihood that he could allege facts stating a non-  
21 frivolous claim even if given further opportunity, this action is DISMISSED WITH  
22 PREJUDICE.

23 **IT IS SO ORDERED.**

24 Dated: December 13, 2019

25 /s/ Phyllis J. Hamilton  
26 PHYLLIS J. HAMILTON  
27 United States District Judge  
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